

AMENDED IN SENATE JULY 5, 2012
AMENDED IN ASSEMBLY MARCH 22, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1525

Introduced by Assembly Members Allen and Alejo
(Principal coauthor: Senator Pavley)

January 19, 2012

An act to ~~amend~~ add Section ~~15630.1~~ of 2043 to the Welfare and Institutions Financial Code, relating to elder or dependent adult financial abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1525, as amended, Allen. Elder or dependent adult financial abuse: ~~mandated reporters: money transmission agents: training materials.~~

Existing law, the Money Transmission Act, provides for the regulation of money transmission businesses in California by the Department of Financial Institutions. Existing law provides that corporations or limited liability companies may become licensed for money transmission, and that a licensee may appoint agents, as specified, to conduct money transmission on behalf of the licensee.

This bill would require specified money transmission licensees to provide, on or before April 1, 2013, and annually thereafter, each of their agents with training materials on recognizing elder or dependent adult financial abuse, and on the appropriate response to suspected elder or dependent adult financial abuse in a transaction.

~~Existing law requires a mandated reporter of suspected financial abuse of an elder or dependent adult to report the known or suspected instance~~

of financial abuse to specified entities. Existing law defines a mandated reporter for these purposes as an employee or officer of a financial institution, as defined. Existing law imposes civil penalties for the failure to report financial abuse, and requires these civil penalties to be recovered in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel.

~~This bill would include a person or entity engaged in money transmission, as defined, in the definition of a mandated reporter of suspected financial abuse of an elder or dependent adult.~~

~~This bill also would make various technical and conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2043 is added to the Financial Code, to*
2 *read:*

3 2043. (a) *On or before April 1, 2013, and annually thereafter,*
4 *each licensee shall provide its agents under contract with training*
5 *materials on recognizing elder or dependent adult financial abuse,*
6 *and how to appropriately respond if the agent suspects that he or*
7 *she is being asked to engage in money transmission for a fraudulent*
8 *transaction involving an elder or dependent adult.*

9 (b) *To ensure that agents that are newly appointed by licensees*
10 *pursuant to Section 2060 receive the training materials described*
11 *in subdivision (a) in a timely manner, each licensee shall provide*
12 *those materials to any newly appointed agent no later than one*
13 *month following the appointment of that agent.*

14 (c) *This section shall not apply to licensees that are engaged*
15 *solely in selling or issuing stored value pursuant to paragraph (2)*
16 *of subdivision (o) of Section 2003. Licensees that engage in money*
17 *transmission activities pursuant to paragraph (1) or (3) of that*
18 *subdivision, shall be subject to this section only with respect to*
19 *their agents under contract for activities described in those*
20 *paragraphs.*

21 ~~SECTION 1. Section 15630.1 of the Welfare and Institutions~~
22 ~~Code is amended to read:~~

23 ~~15630.1. (a) As used in this section, the following definitions~~
24 ~~apply:~~

1 ~~(1) “Financial abuse” means financial abuse as defined in~~
2 ~~Section 15610.30.~~

3 ~~(2) “Financial institution” means any of the following:~~

4 ~~(A) A depository institution, as defined in Section 3(e) of the~~
5 ~~Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(e)).~~

6 ~~(B) An institution-affiliated party, as defined in Section 3(u) of~~
7 ~~the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).~~

8 ~~(C) A federal credit union or state credit union, as defined in~~
9 ~~Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752);~~
10 ~~including, but not limited to, an institution-affiliated party of a~~
11 ~~credit union, as defined in Section 206(r) of the Federal Credit~~
12 ~~Union Act (12 U.S.C. Sec. 1786(r)).~~

13 ~~(3) “Mandated reporter of suspected financial abuse of an elder~~
14 ~~or dependent adult” means either of the following:~~

15 ~~(A) An officer or employee of a financial institution.~~

16 ~~(B) A money transmitter.~~

17 ~~(4) “Money transmitter” means a person or entity engaged in~~
18 ~~either of the following:~~

19 ~~(A) Selling or issuing payment instruments, as defined in~~
20 ~~subdivision (q) of Section 2003 of the Financial Code.~~

21 ~~(B) Receiving money for transmission, as defined in subdivision~~
22 ~~(s) of Section 2003 of the Financial Code.~~

23 ~~(b) (1) Any mandated reporter of suspected financial abuse of~~
24 ~~an elder or dependent adult who has direct contact with the elder~~
25 ~~or dependent adult or who reviews or approves the elder or~~
26 ~~dependent adult’s financial documents, records, or transactions;~~
27 ~~in connection with providing financial services with respect to an~~
28 ~~elder or dependent adult, and who, within the scope of his or her~~
29 ~~employment or professional practice, has observed or has~~
30 ~~knowledge of an incident, that is directly related to the transaction~~
31 ~~or matter that is within that scope of employment or professional~~
32 ~~practice, that reasonably appears to be financial abuse, or who~~
33 ~~reasonably suspects that abuse, based solely on the information~~
34 ~~before him or her at the time of reviewing or approving the~~
35 ~~document, record, or transaction in the case of mandated reporters~~
36 ~~who do not have direct contact with the elder or dependent adult,~~
37 ~~shall report the known or suspected instance of financial abuse by~~
38 ~~telephone or through a confidential Internet reporting tool, as~~
39 ~~authorized pursuant to Section 15658, immediately, or as soon as~~
40 ~~practicably possible. If reported by telephone, a written report shall~~

1 be sent, or an Internet report shall be made through the confidential
2 Internet reporting tool established in Section 15658, within two
3 working days to the local adult protective services agency or the
4 local law enforcement agency.

5 (2) ~~When two or more mandated reporters jointly have~~
6 ~~knowledge or reasonably suspect that financial abuse of an elder~~
7 ~~or a dependent adult for which the report is mandated has occurred,~~
8 ~~and when there is an agreement among them, the telephone report~~
9 ~~or Internet report, as authorized by Section 15658, may be made~~
10 ~~by a member of the reporting team who is selected by mutual~~
11 ~~agreement. A single report may be made and signed by the selected~~
12 ~~member of the reporting team. Any member of the team who has~~
13 ~~knowledge that the member designated to report has failed to do~~
14 ~~so shall thereafter make that report.~~

15 (3) ~~If the mandated reporter knows that the elder or dependent~~
16 ~~adult resides in a long-term care facility, as defined in Section~~
17 ~~15610.47, the report shall be made to the local ombudsman or local~~
18 ~~law enforcement agency.~~

19 (e) ~~An allegation by the elder or dependent adult, or any other~~
20 ~~person, that financial abuse has occurred is not sufficient to trigger~~
21 ~~the reporting requirement under this section if both of the following~~
22 ~~conditions are met:~~

23 (1) ~~The mandated reporter of suspected financial abuse of an~~
24 ~~elder or dependent adult is aware of no other corroborating or~~
25 ~~independent evidence of the alleged financial abuse of an elder or~~
26 ~~dependent adult. The mandated reporter of suspected financial~~
27 ~~abuse of an elder or dependent adult is not required to investigate~~
28 ~~any accusations.~~

29 (2) ~~In the exercise of his or her professional judgment, the~~
30 ~~mandated reporter of suspected financial abuse of an elder or~~
31 ~~dependent adult reasonably believes that financial abuse of an~~
32 ~~elder or dependent adult did not occur.~~

33 (d) ~~Failure to report financial abuse under this section shall be~~
34 ~~subject to a civil penalty not exceeding one thousand dollars~~
35 ~~(\$1,000) or if the failure to report is willful, a civil penalty not~~
36 ~~exceeding five thousand dollars (\$5,000), which shall be paid by~~
37 ~~the financial institution that is the employer of the mandated~~
38 ~~reporter, the money transmitter, or, as applicable, the employer of~~
39 ~~the money transmitter, to the party bringing the action. Subdivision~~
40 ~~(h) of Section 15630 shall not apply to violations of this section.~~

1 ~~(e) (1) The civil penalty provided for in subdivision (d) shall~~
2 ~~be recovered only in a civil action brought against the financial~~
3 ~~institution or the money transmitter by the Attorney General,~~
4 ~~district attorney, or county counsel. No action shall be brought~~
5 ~~under this section by any person other than the Attorney General,~~
6 ~~district attorney, or county counsel. Multiple actions for the civil~~
7 ~~penalty shall not be brought for the same violation.~~

8 ~~(2) Nothing in the Financial Elder Abuse Reporting Act of 2005~~
9 ~~shall be construed to limit, expand, or otherwise modify any civil~~
10 ~~liability or remedy that may exist under this or any other law.~~

11 ~~(f) As used in this section, “suspected financial abuse of an elder~~
12 ~~or dependent adult” occurs when a person who is required to report~~
13 ~~under paragraph (3) of subdivision (a) observes or has knowledge~~
14 ~~of behavior or unusual circumstances or transactions, or a pattern~~
15 ~~of behavior or unusual circumstances or transactions, that would~~
16 ~~lead an individual with like training or experience, based on the~~
17 ~~same facts, to form a reasonable belief that an elder or dependent~~
18 ~~adult is the victim of financial abuse.~~

19 ~~(g) Reports of suspected financial abuse of an elder or dependent~~
20 ~~adult made by an employee or officer of a financial institution or~~
21 ~~a money transmitter pursuant to this section are covered under~~
22 ~~subdivision (b) of Section 47 of the Civil Code.~~